

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: TEXAS ARMY NATIONAL GUARD

FAA Order No. 2012-6

Docket No. CP09SO0014
FDMS No. FAA-2009-1045¹
Served: June 18, 2012

ORDER DENYING PETITION TO RECONSIDER OR MODIFY²

On June 8, 2012, Respondent Texas Army National Guard (Respondent) filed a timely petition to reconsider or modify FAA Order No. 2012-3 (May 22, 2012). FAA Order No. 2012-3 assessed Respondent a civil penalty of \$30,000 for violations of the Department of Transportation Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-178.

In its petition to reconsider, Respondent argues, as it did in its appeal brief (Appeal Brief at 7), that the civil penalty guidelines that apply to this case are found at 49 C.F.R. Part 107, Subpart D, Appendix A. As stated in FAA Order No. 2012-3, however:

... Appendix A contains the penalty guidelines published by the Pipeline and Hazardous Materials Safety Administration (PHMSA)

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at the following Internet address: www.regulations.gov.

² The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. In addition, Thomson Reuters/West Publishing publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

for the transportation of hazardous materials *by ground*. *Atlas Frontiers*, FAA Order No. 2010-10 at 10 (June 16, 2010).

The PHMSA is the administration within the Department of Transportation (DOT) that promulgates the HMR. The FAA has the delegated authority to enforce the federal hazardous materials transportation law and HMR regarding *air* shipment of hazardous materials. FAA Order No. 2150.3B, Appendix C, ¶ 1.c, citing 49 C.F.R. § 1.47(j).

FAA Order No. 2012-3 at 6 n.8. The Administrator explained in FAA Order No. 2012 at 5-6 that the FAA penalty guidelines apply to this case, which involves the transportation of hazardous materials by air. These guidelines are set forth in Appendix C, entitled “Sanction Guidance, Hazardous Materials Enforcement,” of FAA Order No. 2150.3B, entitled “FAA Compliance and Enforcement Program.” FAA Order No. 2012-3 at 5-6.

THEREFORE, Respondent’s petition for reconsideration is denied under 14 C.F.R. § 13.234(d)³ and a \$30,000 civil penalty is assessed.⁴

MICHAEL P. HUERTA
ACTING ADMINISTRATOR
Federal Aviation Administration

[Original signed by Vicki Leemon.]

VICKI LEEMON⁵
Manager, Adjudication Branch

³ Section 13.234(d) provides as follows: “The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.”

⁴ Under the Rules of Practice, unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this order, this order is an order assessing civil penalty. 14 C.F.R. §§ 13.16(d)(4) and 13.233(j)(2).

⁵ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.